

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|-------------------------------------|---|------------------------------------|--|
| Investigator: Craig Anderson | Team: Squad #7 | CCRB Case #: 201605895 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 07/07/2016 8:10 PM | Location of Incident: Seventh Avenue and West 42nd Street | Precinct: 14 | 18 Mo. SOL 1/7/2018 | EO SOL 1/7/2018 | |
| Date/Time CV Reported Sat, 07/09/2016 4:12 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Sat, 07/09/2016 4:12 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. POM Xinping Huang | 25338 | 949120 | SRG 2 |
| 2. SGT Christophe Siani | 04029 | 919712 | SRG 1 |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. SGT Anthony Coppola | 04872 | 920149 | SRG 4 |
| 2. POM James Conn | 11219 | 952610 | SRG 1 |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|---|-----------------------------|
| A.POM Xinping Huang | Force: Police Officer Xinping Huang used physical force against § 87(2)(b) [REDACTED] | [REDACTED] |
| B.SGT Christophe Siani | Force: Sergeant Christopher Siani used physical force against § 87(2)(b) [REDACTED] | [REDACTED] |

Case Summary

On July 7, 2016, § 87(2)(b) participated in a Black Lives Matter protest at Seventh Avenue and West 42nd Street in Manhattan. Officers from the Strategic Response Group conducted enforcement and issued warnings stating that individuals who blocked the street would be arrested. At approximately 8:10 p.m., PO Xinping Huang, Sgt. Christopher Siani, and possibly an unidentified third officer, attempted to handcuff § 87(2)(b). During the ensuing struggle, § 87(2)(b) and the officers fell to the ground. Since § 87(2)(b) was face down on the ground, he was uncertain what specific actions of force were used against him, but felt that right arm was forcibly twisted or struck, ultimately resulting in a fracture to his right humerus bone (**Allegations A and B**).

A prisoner bus transported § 87(2)(b) to the 7th Precinct stationhouse, after which an ambulance transported him to § 87(2)(b) Hospital, where he received a cast. § 87(2)(b) independently received follow-up treatment at § 87(2)(b) (see Privileged Documents). Sgt. Siani strained his right elbow during the arrest (see Board Review 01).

§ 87(2)(b)

One video obtained from § 87(2)(b) shows officers struggling with § 87(2)(b) but the chaotic nature of the video makes it difficult to discern what is happening (see Board Review 05). One video shows § 87(2)(b) on the ground, but the shot is very brief (see Board Review 06). Another video shows officers walking § 87(2)(b) toward the prisoner bus following his arrest, but does not show what occurred before this (see Board Review 07).

Mediation, Civil and Criminal Histories

- § 87(2)(b)'s fractured arm rendered this case unsuitable for mediation.
- On August 2, 2016, § 87(2)(b) filed a Notice of Claim against the City of New York, claiming assault and battery and police brutality, among other things. He noted that he received physical injuries as a result (see Board Review 20).
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (see Board Review 09).
- PO Huang has been a member of the NYPD for six years. There are three prior complaints against him, none of which were substantiated. One complaint included a force allegation, which was closed as victim uncooperative.
- Sgt. Siani has been a member of the NYPD for nineteen years. There are thirteen prior complaints against him containing 41 allegations. In case 200717516, the CCRB substantiated a vehicle search allegation and recommended command discipline. The NYPD issued no disciplinary action. In case 201008648, the CCRB substantiated a frisk allegation and recommended Command Discipline B, which the NYPD issued. Four of

his prior complaints include force allegations. They were exonerated in two cases and unsubstantiated in one case; the fourth case was closed as complainant uncooperative

Potential Issues

- As of September 14, 2016, the NYPD Threat, Resistance or Injury Worksheet and Investigating Supervisor's Assessment Report have not been finalized. These documents were therefore unavailable to the investigation.
- A review of video footage on § 87(2)(b), and other websites yielded many videos from this protest, but no footage of § 87(2)(b)'s arrest aside from that referenced above. Footage from nearby TARU cameras did not show § 87(2)(b)'s arrest. The IAB investigator assigned to this case, Sgt. John Addeo, reviewed additional footage recorded by ground-based TARU personnel but said none of the footage showed § 87(2)(b)'s arrest. The incident occurred outside the Times Square subway station, but William Robinson, a New York City Transit representative, said they have no cameras outside the station (see Board Review 10). The manager of a nearby Champs athletic store said they have no exterior cameras (see Board Review 11). A subpoena was submitted to a nearby Walgreens for video footage, but the footage has yet to be received.
- § 87(2)(b) a friend of § 87(2)(b)'s who attended the protest with him, said in a phone statement that he was arrested before § 87(2)(b) and therefore did not see the officers arrest him (see Board Review 12). § 87(2)(b) a journalist who recorded the video of § 87(2)(b) being escorted toward the prisoner bus, said she did not observe any part of § 87(2)(b)'s arrest aside from what she recorded on video (see Board Review 13). There are no other identified civilian witnesses.

Findings and Recommendations

Allegations not pleaded

Force – Asp as Club: In his online complaint form, § 87(2)(b) said that an officer struck his arm with an asp, causing a fracture (see Board Review 14). In his in-person interview, § 87(2)(b) clarified that he felt an impact to his arm but did not see its source; he only speculated that it may have been an asp. Because § 87(2)(b) was uncertain whether he was struck with an asp, and none of the officers involved described striking him with an asp or seeing another officer do so, only physical force allegations have been pleaded.

Allegation A – Force: Police Officer Xinping Huang used physical force against § 87(2)(b)

Allegation B – Force: Sergeant Christopher Siani used physical force against § 87(2)(b)

§ 87(2)(b) said that he linked arms with other protesters and stood in the street, after which officers started arresting them. An officer he described as a white man, 5'7" to 5'8" tall, with a medium build and a moustache grabbed him by the front of his shoulder and pulled him forward. That officer let go, causing § 87(2)(b) to stumble backward. Two officers he could not see then grabbed each of his shoulders from behind. One officer "violently pulled back" his left shoulder, causing § 87(2)(b) to lose his balance. § 87(2)(b) denied resisting or trying to escape the officers, but said he stepped forward to regain his balance, after which he was "thrown" to the ground. He had difficulty describing how the officers threw him (see Board Review 15).

§ 87(2)(b) landed face-down and therefore could not see the officers on the ground, but said he felt pairs of hands on his left side, right side, and back. § 87(2)(b) denied that he tried to avoid being handcuffed. As the officer on his right side moved § 87(2)(b)'s arm toward his back to handcuff him, § 87(2)(b) felt an impact to his right upper arm, which caused a fracture to his right humerus bone. He was uncertain of the exact cause of the injury, saying that the officer holding his right arm may have twisted it, or an officer may have struck him with an asp or other object.

After the prisoner bus took § 87(2)(b) to the 7th Precinct stationhouse, an ambulance transported him to § 87(2)(b) Hospital. According to his medical records, § 87(2)(b) said an officer “kicked” him in the arm while he reached for his ID during his arrest. He informed medical personnel that “police manhandled him at a protest,” and that he may have been struck with an unknown object. An x-ray found a fracture in his right humerus and § 87(2)(b) was given a cast. § 87(2)(b) independently visited § 87(2)(b), where the physician said his arm will “clearly require surgery.” However, when § 87(2)(b) consulted an orthopedist at § 87(2)(b), his arm was noted to be healing well and doctors determined he might not need surgery. § 87(2)(b) also said he sustained abrasions to his right knee and a chipped tooth when officers took him to the ground, but these are not documented in the medical records obtained by the investigation (see Privileged Documents).

PO Huang said that he approached § 87(2)(b) and told him to put his hands behind his back. § 87(2)(b) refused, so PO Huang tried to grab his hands, but § 87(2)(b) “stiffened” and “flailed” his arms to prevent this. Approximately two officers, who PO Huang could not identify, came to assist him. The officers grabbed the right side of § 87(2)(b)'s body to put him on the ground. PO Huang and § 87(2)(b) both “gently fell” down. § 87(2)(b) landed face-down. On the ground, § 87(2)(b) resisted “just a little bit” by “stiffening his arms” and pulling his arms away. PO Huang put § 87(2)(b)'s right hand in cuffs; another officer assisted in handcuffing his left hand. PO Huang said no other force was used and he did not know the cause of § 87(2)(b)'s broken arm, which he did not learn of until he went to the stationhouse for arrest processing. PO Huang did not know the cause of Sgt. Siani's strained elbow (see Board Review 16).

Sgt. Siani said he observed two officers he could not identify by name “trying to get control of § 87(2)(b)'s arms” while § 87(2)(b) tried to escape and return to the crowd of protesters. Sgt. Siani approached the struggle and grabbed § 87(2)(b) by one of his arms – he was not sure which arm. Sgt. Siani and § 87(2)(b) both fell to the ground; Sgt. Siani could not describe how this happened. § 87(2)(b) landed on his chest and Sgt. Siani landed “partially” on top of him, with one knee on § 87(2)(b)'s back and one knee on the ground. § 87(2)(b) resisted being handcuffed by refusing to give up his hands, keeping them under his body. Sgt. Siani eventually handcuffed one of § 87(2)(b)'s hands – possibly his left. Sgt. Siani denied striking § 87(2)(b) during the struggle and said no officer hit him with an asp. Sgt. Siani observed an odd bend in § 87(2)(b)'s arm following the arrest. Sgt. Siani sustained a strained right elbow during the struggle, possibly due to a hyperextension. He was unsure of the precise cause of this injury. Sgt. Siani was out of work due to the injury for six days, then on limited duty for one day. He consulted an orthopedist, but his arm did not require surgery (see Board Review 17 and 01).

PO James Conn, who was named as a witness on Sgt. Siani's Line of Duty Injury Report, said he was arresting a different individual when he saw Sgt. Siani and at least one other officer

struggling with § 87(2)(b). He said § 87(2)(b) was “aggressively resisting,” but could not describe this in detail. § 87(2)(b) and the officers all “leaned in one direction” and fell on the ground. PO Conn did not see anything that happened after this, as he continued escorting his own prisoner to the bus. He said he only observed the struggle for about two seconds and did not see the officers use any force against § 87(2)(b) (see Board Review 18).

Sgt. Anthony Coppola can be seen helping PO Huang escort § 87(2)(b) to the bus in § 87(2)(b)'s video (see Board Review 07). However, Sgt. Coppola said he was not involved in and did not observe the struggle to handcuff § 87(2)(b) and only came to help afterward (see Board Review 19).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

PO Huang believed he handcuffed § 87(2)(b)'s right hand, which is the arm that was broken. By PO Huang's own account, § 87(2)(b) resisted “just a little bit” while on the ground, so any deliberate use of force powerful enough to fracture his arm would have been excessive.

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Squad: 7

| | | | |
|---------------|-----------------|-----------------------|-------|
| Investigator: | _____ | <u>Craig Anderson</u> | _____ |
| | Signature | Print | Date |
| Squad Leader: | _____ | <u>Diana Murray</u> | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |

